SAW SOON TEE

v.

TIMBALAN MENTERI HAL EHWAL DALAM NEGERI, MALAYSIA & ORS.

HIGH COURT MALAYA, JOHOR BAHRU
JAMES FOONG JC
[ORIGINATING SUMMONS NO. 24-167-90]
11 SEPTEMBER 1990

CRIMINAL LAW: *Detention order - Dates of order, service and actual custody different - No explanation for delay of 8 days - All convenient speed - Strict construction - Article 5(1) of Federal Constitution.*

Pursuant to an order of the Deputy Minister of Home Affairs dated 19 November 1986, the plaintiff S was restricted to Kota Tinggi, Johor for a period of 5 years; however the order was only served on him on 25 November 1986 - the plaintiff arrived at KT on 27 November 1986. The plaintiff claims firstly that his detention and custody from 19 November 1986 to 26 November 1986 was illegal and unauthorised as it contravened Article 5(1) of the Federal Constitution and secondly that his current restriction pursuant to the order dated 19 November 1986 is bad, illegal and of no legal effect.

The issue for determination was whether the 8 days difference (from 19 November 1986 to 26 November 1986 inclusive) is reasonable in the circumstances to justify the delay from the date of the said order to the date when the plaintiff was brought to KT.

Held:

[1] The test to apply in such cases is for the High Court to determine whether necessary steps to be taken by the authority pursuant to the implementation of restriction orders are done with all convenient speed.

[2] On the facts of this case the order dated 19 November 1986 only reached the police headquarters at Bukit Aman on 24 November 1986, therefore this was not done with all convenient speed. In addition, no explanation has been provided at all in the affidavits by the defendants to explain this delay.

[Plaintiff's application granted.]

Case referred to:
Tan Hoon Seng v. Minister of Home Affairs, Malaysia & Anor. [1990] 1 CLJ (Rep) 271

Legislation referred to:
Federal Constitution, art. 5(1)

For the plaintiff - Teh Poh Teik; M/s. Abdul Raman Saad & Assoc.
For the defendants - Suriyadi bin Halim, Peguam Kanan Persekutuan

JUDGMENT

James Foong JC:

The plaintiff in this case is currently restricted to Bandaran Kota Tinggi in Johor in pursuant to an order made by the Deputy Minister of Home Affairs dated 19 November 1986. Under this order the plaintiff is restricted to Kota Tinggi, Johor for a period of 5 years with certain conditions to be adhered to during his period of detention.

This detention though made on 19 November 1986 was only served on him in Penang prison on 25 November 1986. Upon the said order being served on him, he was released from prison on 25 November 1986 and taken to the Pulau Pinang police station lock up to spend a night while the police authorities arranged transport and police escorts to bring him to Kota Tinggi in Johor.

On 26 November 1986 escorted by 2 detectives the plaintiff and the party travelled from Penang to Kuala Lumpur (where they spent a night) and thereafter on to Kota Tinggi arriving there on 27 November 1986.

The plaintiff now claims that his detention is illegal and contrary to law on the ground that the said order dated 19 November 1986 by Deputy Minister of Home Affairs was not served on him on 19 November 1986 and that he was not restricted in Kota Tinggi, Johor from 19 November 1986 but instead on 27 November 1986.

The plaintiff's originating summons prayers for 5 orders but at the hearing the plaintiff's Counsel informed the Court that the plaintiff is only requesting for prayers 2, 3 and 5 which are as follows:

> Prayer 2: That the detention and custody of the plaintiff at Penjara Pulau Pinang from 19 November 1986 to 26 November 1986 is illegal, unauthorised and not in accordance with law as it contravened Article 5(1) of the Federal Constitution.
>
> Prayer 3: That the plaintiff's current restriction to Bandaran Kota Tinggi pursuant to order dated 19 November 1986 issued by the 1st defendant is bad, illegal and of no legal effect.
>
> Prayer 5: Costs.

Prayers (1) and (4) are dropped and as such this Court shall not deal with them.

Both the learned plaintiff's Counsel and the Senior Federal Counsel acting for the 4 defendants who represented the authorities agreed that the application lies on whether 8 days difference (i.e.) from 19 November 1986 to 26 November 1986 (inclusive) is reasonable in the circumstances to justify the delay from date of the said order to the date when the plaintiff was brought to Kota Tinggi.

During the course of the hearing I requested both Counsels to supply me with the exact days that correspondence was done with dates and the events that took place:

19.11.86	- Wednesday	- Order issued by Deputy Minister of Home Affairs.
20.11.86	- Thursday	- No evidence of action taken.
21.11.86	- Friday	- No evidence of action taken.
22.11.86	- Saturday	- No evidence of action taken.
23.11.86	- Sunday	- A weekend holiday in Kuala Lumpur.
24.11.86	- Monday	- On this date according to the affidavit of one Insp. Ismail Yusof an officer attached to Cawangan Kongsi Gelap, Bahagian Selatan, Bukit Aman, Kuala Lumpur, by the said order was received by police headquarter, Bukit Aman, Kuala Lumpur.
25.11.86	- Tuesday	- (a) The said order was sent by Bukit Aman, Kuala Lumpur to Penang and Penang police authorities confirmed receiving it. This is stated in the affidavit of Insp. Rossne bte Abdul Hamid attached to the Penang police (encl. 9).

(b) Insp. Rossne served the said order on the plaintiff at the Penang prison and the plaintiff was released from the prison.

(c) The plaintiff spent a night in the Penang police lock-up when transport and police escort personnel were ar ranged to transport the plaintiff down to Kota Tinggi. This was stated in the affidavit of Insp. Rossne (encl. 9).

26.11.86 - Wednesday - The plaintiff with the 2 police escorts travelled from Penang going to the south. They spent a night in Kuala Lumpur and then proceeded to Kota Tinggi.

27.11.86 - Thursday - The plaintiff arrived at Kota Tinggi.

From the sequence of events one would note that the delay in serving and putting into execution of the said order is between 19 November 1986 to 24 November 1986, a period of 2½ full working days. This is excluding the day of the said order (19 November 1986) and the Sunday weekend holiday (23 November 1986).

Why was there a delay? No answers were found and as the plaintiff's Counsel rightly pointed out, the defendants' in none of their affidavits in reply provided any explanation of this delay.

The affidavit of Insp. Rossne (encl. 9) provided answers, to the period she received the said order in Penang to the time the plaintiff arrived in Kota Tinggi, stating that administrative arrangements have to be made for the long journey. What happened to the period between the date of the said order to the date when police headquarters in Bukit Aman received the same?

As bound by the decision of the Supreme Court Civil Appeal 01-13-1989, No. 01-14 of 1989, 01-15 of 1989 and No. 01-17 of 1989 - Phua Hing Lai - plaintiff against:

(1) Timbalan Menteri Hal Ehwal Daerah.
(2) Ketua Polis Negeri Kelantan.
(3) Ketua Polis Daerah Kuala Krai.
(4) Government of Malaysia.

and related appeals (unreported) the test to apply in such cases under such circumstances is for the High Court to determine whether necessary steps to be taken by the authority pursuant to the implementation of restriction order is "done with all convenient speed."

Tan Sri Hashim Yeop Abdullah Sani (CJ) at p. 6 of his judgment in the above stated case stated that "The words 'as soon as may be' means as nearly as may be reasonable in the circumstances of the case."

In the circumstances of this case before me, I find that the defendants have not carried out the execution of the said order with all convenient speed.

Again referring back to the dates in question, why is there no action between 19 November 1986 to 24 November 1986. The police authorities can act expediently. When they received the said order on 24 November 1986 they immediately despatched or forwarded it to their counterpart in Penang. Penang police authority confirmed receiving the said order on 25 November 1986. Again immediately on the same day Insp. Rossne went to the Penang prison to collect the plaintiff. Arrangement was then made and I find it reasonable explanation that for a long journey a day would be required for this arrangement.

Again, I find it reasonable that the plaintiff and the two police escorts had to stop in Kuala Lumpur for a night as it is a long journey down from north to south of Peninsular Malaysia.

However, I find that the said order signed on 19 November 1986 by the Deputy Minister of Home Affairs to reach the police headquarters at Bukit Aman, Kuala Lumpur on 24 November 1986 was not done with all convenient speed. In addition to all these, I find that no explanation has been provided at all in the affidavits by the defendants to explain this delay.

Again bound by the decision of the Supreme Court in *Tan Hoon Seng v. Minister of Home Affairs, Malaysia & Anor*. [1990] 1 CLJ (Rep) 271 which state that "the law of preventive detention must be construed strictly", I find that the detention and custody of the plaintiff at Penjara Pulau Pinang from 19 November 1986 to 26 November 1986 is illegal, unauthorised and not in accordance with law as it contravened Article 5(1) of the Federal Constitution which state that "No person shall be deprived of his life or person at liberty same in accordance with law."

As the plaintiff's current restriction to Bandaran Kota Tinggi pursuant to order dated 19 November 1986 issued by the 1st defendant is bad and illegal it is of no legal effect. I therefore allow prayers 2 and 3 of this application.

I shall make no order as to cost.

Also found at [1990] 2 CLJ 1039